

Carmela F. Garnica  
12601 Ward St.  
Blythe, Ca. 92225  
(760)922-9080

<b>DOCKET</b> 02-AFC-1
DATE _____
RECD. <b>JAN 13 2006</b>

**State of California**  
Energy Resources Conservation  
And Development Commission

In the Matter of:	)	
	)	Docket No. 02-AFC-1
	)	
Application for Certification for the	)	Petition for Reconsideration
Blythe Energy Project, Phase II	)	of Carmela F. Garnica
[Blythe II]	)	
_____	)	

Pursuant to Section 1720 of Title 20 of the Rules of Practice and procedure Intervener petitions the Commission for reconsideration of the Decision for the Blythe Energy Project Phase 2 Docket 02-AFC-1. On December 14, 2005 the Commission adopted the Presiding Members Proposed Decision (PMPD) and its errata which was circulated to the parties on day before the commission rendered its decision on the proposed project. The petition for reconsideration is based on subsequent information received by the intervenor about ammonia handling violations of the applicant, failure of the Commission's document handling procedures, and the Commissions own willful act of approving the power plant subject to an errata that contained substantive revisions to the decision which should have required a re-issuance of the decision.

The matters contained in the errata concerning changes to the Decision, document handling failures and EPA requirements are explained in the Intervener's outstanding notice to correct or cure filed on 12/19/05 docket log number 36100. In that demand to correct or cure Intervenor noticed the Commission that improper proof of service had occurred and Intervener was not in possession of substantial documents needed to fully participate in the Commissions December 13 Committee conference.

"that the Commission failed to provide Intervener 10 days advanced notice of substantial amendments and changes to the Presiding Members Proposed Decision (PMPD), including, but not limited to, substantial changes to the PMPD air quality section in response to comments by the US EPA related to compliance with the requirements of the federal Clean Air Act (CAA). The U.S. EPA filed comments on November 21, 2005 according to the projects docket log #35946. The Commission never served a copy of the US EPA comment letter on Intervener nor did the Commission serve Intervener with a copy of the US EPA's 12/26/2002 comments on the PDOC as can be demonstrated by the failure of the Commission to list a Proof of Service (POS) on the docket logs for these filings by the US EPA in this case."

The decision is based on mitigation measures that are to be approved by the US EPA at a later date. As the Lead Agency it is not sufficient to rely on the EPA to ensure that mitigation is adequately quantified and implemented. Then EPA's responsibility is to assure compliance with Federal Regulations not CEQA compliance. The Energy Commission "may delegate reporting or monitoring responsibilities to another public agency; *however*, until mitigation measures have been identified and quantified the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs." (Cal. Code Regs., tit. 14, §15097(a) (emphasis added).).

These decisions on mitigation measures will not be subject to appeal by the Intervenor to the Commission accordingly the decision should be set aside until such time that the projects air quality mitigation measures have been approved by the EPA. Of particular concern are the road paving credits that will be primarily PM-10 and ineffective in the winter months when PM- 2.5 levels will be the highest. Road paving PM-10 emissions have been traditionally unacceptable or severely limited by the Commission's previous Decisions and the Commission not the EPA is responsible for the CEQA impacts from the road paving credit decisions. The uncertainty of the mitigation is highlighted by the January 5, 2006 submission of the Mojave Desert Air Quality Management District to the EPA posted to the Commissions website on January 10, 2006.

## **Anhydrous Ammonia**

Subsequent to the Decision Intervenor has discovered that the applicant has been fined by the U.S. Department of Labor Occupational Safety & Health Administration (OSHA).

## **FPL Ammonia Incident Blythe**

Inspection: 125917542 - FPL Energy

Inspection Information - Office: Ca Anaheim (Psm S.)		
Nr: 125917542	Report ID:0950637	Open Date: 10/01/2004
Fpl Energy 15560 Hobsonway Blythe, CA 92225 SIC: 4911/Electric Services NAICS: 221119/Other Electric Power Generation Mailing: P.O.Box 1210, Blythe, CA 92226		
Union Status: Union		
Inspection Type: Planned		
Scope: Partial		Advanced Notice: N
Ownership: Private		
Safety/Health: Health		Close Conference: 02/10/2005
Planning Guide: Health-Manufacturing		Close Case:

	Violation Summary					
	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations				4		4
Current Violations				4		4
Initial Penalty				1340		1340
Current Penalty				1340		1340
FTA Amount						

Violation Items										
#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	<b>01001</b>	Other	5189 F04	03/30/2005	05/02/2005	\$335	\$335	\$0	05/10/2005	-
2.	<b>01002</b>	Other	5189 F01 C	03/30/2005	05/02/2005	\$335	\$335	\$0	05/10/2005	-
3.	<b>01003</b>	Other	3314 G01	03/30/2005	05/02/2005	\$335	\$335	\$0	05/10/2005	-
4.	<b>01004</b>	Other	5144 F06	03/30/2005	04/12/2005	\$335	\$335	\$0	05/10/2005	-

Consider the Plant's history, as discussed for the first time in the errata to the PMPD issued one day before the Decision

"Staff calculated that a significant occurrence on Interstate 10, which is closer than Mesa Verde, was 2 in 1,000,000. (PMPD, p. 104) At the evidentiary hearings, public witnesses brought in a local newspaper story about the shut-down of Interstate 10, without injuries or fatalities, due to an ammonia incident at BEP I (Palo Verde Valley Times, September 29, 2004) The PMPD recognizes that there could be benefits from the use of the alternative refrigerant and asks the Applicant to consider it. However, the Commission also imposes numerous conditions, not initially in the BEP I Decision, related to the use of the ammonia refrigerant, including preparation of an Ammonia Refrigeration Hazard Reduction Plan under EPA guidelines as well as automatic fire suppression systems and closure devices. (PMPD, pp. 104 - 107) See **HAZ-8**, **HAZ-10** and **HAZ-11**. On this basis, the Commission has properly determined that the use of ammonia refrigerant by the project does not create a significant impact nor significant public health and safety risk. "

First it is unconscionable that the Commission would offer no weight to the ammonia incident that shut down highway 10 for many hours on September 28, 2004 as evidence by the article from the Palo Verde Times. The Commission's Compliance Division is fully aware of the incident and for the Commission to act like it first heard of the Blythe 1 ammonia incident from residents who brought in a newspaper article is a reckless abuse of discretion. The Commission has an obligation to correct this potential disaster and rather than relying on Staff's estimate "that a significant occurrence on Interstate 10, which is closer than Mesa Verde, was 2 in 1,000,000. (PMPD, p. 104)" is an estimate which has been proven to be completely incorrect.

As the CEQA Lead Agency, the Energy Commission must review the environmental impacts of the project and, before granting approval, must find that all identified significant adverse impacts are either mitigated or that mitigation measures identified in the proceeding are infeasible and there are overriding considerations that warrant approval of the project despite the identified impacts. (Pub. Resources Code §21081; Cal. Code Regs., tit. 20, §1755(c).) These

findings must be supported by substantial evidence in the record. (Cal. Code Regs., tit.14, § 15091(b).) Substantial evidence is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached" and consists of facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. (Pub. Resources Code §21080(e)(1); Cal. Code Regs., tit. 14, §15384.) In light of the fact that the staff's 2 in 1,000,000 probability of an incident on Interstate 10 has been proven optimistic at best and fraudulent at worst considering Commission staff and presumably the Presiding Member are aware of the Blythe ammonia incident. The Commission should require Aqueous ammonia for phase 2 and amend the Decision for Blythe1 to require the use of aqueous ammonia, rather than rely on clearly the erroneous evidence that the possibility of an incident is 2 in 1,000,000 when an incident has already occurred and four OSHA violations for the illegal exposure of workers to ammonia has now been cited in publicly available information on the U.S. Department of Labor Occupational Safety & Health Administration website.

I authorize Michael Boyd and Robert Sarvey, as Officers of CALifornians for Renewable Energy, Inc. (CARE) to which I am a member and Caroline Farrell of the Center on Race Poverty and the Environment to represent me Carmela F. Garnica, in the 02-AFC-1 Blythe Siting case.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Carmela F. Garnica'.

Carmela F. Garnica  
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### **Verification**

I am an Intervener in the above captioned proceeding, and I am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 13<sup>th</sup> day of January 2006, at Blythe, California.

A handwritten signature in cursive script, appearing to read "Carmela F. Garnica".

Carmela F. Garnica  
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